

1 of a concern to me that you would say that  
2 because every one of our fact witnesses has  
3 stayed pure pursuant to how we played it two  
4 years ago. And my understanding was we did  
5 have an understanding, certainly, on our side.

6 None of our witnesses have been in  
7 this courtroom to listen to any other fact  
8 witness. We don't have fact witnesses reading  
9 other fact witnesses' testimony. So that the  
10 fact witnesses that you get are not like the  
11 experts. The fact witnesses are just their  
12 role.

13 The comparison to so-called notes,  
14 Your Honor, is specious. Those were notes of  
15 his conversation. He was directly involved in  
16 the conversation.

17 JUDGE SIPPEL: That is correct.

18 MR. CARROLL: He wants to show him  
19 testimony he is not a part of, has never  
20 witnessed, intentionally never witnessed. And  
21 it has no foundation or connection to this  
22 witness.

1 JUDGE SIPPEL: I can't let you do  
2 it.

3 MR. SCHMIDT: Okay. Then put that  
4 to the side, if you would. We'll just ask a  
5 question, Your Honor.

6 BY MR. SCHMIDT:

7 Q Do you know if there was, in fact,  
8 a bid for [REDACTED] million, Mr. Donnelly?

9 A I don't recall if there was.

10 Q You said a moment ago that you had  
11 the view that Tennis Channel was not worth  
12 proceeding. Ms. Armor presented a -- I'm  
13 sorry. I'm misspeaking. You stated a moment  
14 ago that you did not think the U.S. Open was  
15 worth pursuing for Versus, correct?

16 A At a cost of [REDACTED] million.

17 Q In that regard, you disagreed with  
18 what Ms. Armor had to say in her slide deck  
19 about it, correct?

20 A I don't know. You know, I don't  
21 know exactly what she said verbally on it, but  
22 certainly it was a pitch deck, no question

1 about it.

2 Q And you would disagree with Mr.  
3 Shell if he actually put out a bid for it,  
4 correct?

5 A I don't know what the basis or  
6 what the other terms would have been if there  
7 were a bid.

8 Q Okay. And you would disagree with  
9 Mr. Burke that it was an interesting idea  
10 worth moving ahead with, correct?

11 A That is different. I was talking  
12 --

13 Q Do you agree?

14 A Well, I would have to look at the  
15 e-mail again, but I don't think he was talking  
16 about a bid of [REDACTED] million.

17 Q He was talking about the three-way  
18 deal, correct?

19 A I thought that's what it -- I  
20 would have to look at the e-mail again, but I  
21 thought that's what it referred to.

22 Q Did you disagree with him that it

1 was an interesting idea to try to get those  
2 rights through that three-way deal?

3 A I thought it was worth looking at.

4 Q Would you disagree with Mr.  
5 Roberts if he were interested in securing U.S.  
6 Open rights for Versus?

7 A If I thought that what he was  
8 willing to pay was too high, I would disagree  
9 with him.

10 MR. SCHMIDT: Thank you.

11 JUDGE SIPPEL: That is what you  
12 are being paid to do.

13 THE WITNESS: That is what he is  
14 paying me to do.

15 JUDGE SIPPEL: Yes. Mr. Roberts  
16 is the chief chief chief executive?

17 MR. SCHMIDT: Yes, sir.

18 JUDGE SIPPEL: Thank you. Go  
19 ahead. Are we finished?

20 MR. SCHMIDT: I'm finished, Your  
21 Honor.

22 JUDGE SIPPEL: Bureau? Mr.

1 Schonman?

2 MR. KNOWLES-KELLETT: Just a few  
3 questions, Your Honor.

4 JUDGE SIPPEL: Yes, sir.

5 MR. KNOWLES-KELLETT: Okay.

6 CROSS-EXAMINATION

7 BY MR. KNOWLES-KELLETT:

8 Q One clean up the record question,  
9 sir, when people use the term "the deck," what  
10 are they referring to?

11 A In what capacity I guess? I don't  
12 know.

13 Q When they point to these proposals  
14 you've called it several times, "This deck was  
15 prepared by" --

16 A When I use it -- I can't speak to  
17 what other people use it for.

18 Q Okay.

19 A But when I was using it, if I used  
20 it today, I was referring to these PowerPoints  
21 that were in front of me.

22 Q Okay. So it's a PowerPoint for a

1 presentation, that's prepared for a  
2 presentation?

3 A Again, I can't speak to what  
4 people use it in general, but if I used it  
5 today, I was referring to the decks of  
6 PowerPoints that were in front of me.

7 Q Okay. My next question is, are  
8 they frequently just e-mailed around?

9 A Occasionally PowerPoints are  
10 e-mailed around. Occasionally they're  
11 presented. I mean, there's not a one way to  
12 do it.

13 Q Okay. But, as far as you are  
14 aware, in Comcast, when they use the term "the  
15 deck," other witnesses from Comcast have used  
16 the same term?

17 A Uh-huh.

18 Q As far as you are aware, it refers  
19 to a PowerPoint analyzing a problem set a  
20 PowerPoint at --

21 A I'd like to hear how they used it  
22 if you want me to answer that. I'm not trying

1 to be difficult, but you're asking me to  
2 answer something that --

3 Q As to yourself, that's --

4 A Okay. As to myself, that's  
5 correct, yeah.

6 Q Okay. Your position now is with  
7 NBC. Is that correct?

8 A That's correct.

9 Q And Matt Bond, how does his  
10 position relate to your position? Do you  
11 report to Matt now?

12 A Oh, no, no, no, no. I am --

13 Q The other way around?

14 A That would be great. I'm in the  
15 --

16 (Laughter.)

17 THE WITNESS: We're in different  
18 pieces of the business.

19 MR. KNOWLES-KELLETT: Okay.

20 BY MR. CARROLL:

21 Q You're in the finance. And he's  
22 in the programming?

1           A       I'm in the finance for the  
2       broadcasting group. And he is in distribution  
3       with the cable network group.

4           Q       Okay.

5           A       So we're in different pieces of  
6       the business.

7           Q       Mr. Burke is above you guys?

8           A       He is.

9           Q       Above both of you?

10          A       He is above me and Matt.

11          Q       And you report to him?

12          A       I do not report to Mr. Burke. A  
13       couple -- I'm a couple of areas away from him.

14          Q       Okay. And are you looking for  
15       synergies now that you are with NBC joint with  
16       Comcast?

17          A       You know, I came into the program  
18       -- into the Broadcasting Division. And  
19       Broadcasting Division is not making a lot of  
20       money. So we're trying to make it to make a  
21       little bit more money. That's what we're  
22       looking for.



1                   There wouldn't be any synergies on  
2                   the broadcasting side because we didn't have  
3                   a broadcasting network that we brought to the  
4                   table. So the area that I'm -- there's a  
5                   broadcasting group within NBC.

6                   Q        Okay.

7                   A        And there's a cable network group.  
8                   And then there's the film group and the parks  
9                   group. I'm in the broadcasting group.  
10                  There's no synergies in broadcasting because  
11                  we didn't have any broadcasting at Comcast.

12                  Q        Could you use ad avails to promote  
13                  NBC broadcasting?

14                  A        I guess you could do things like  
15                  that cross-promotion. NBC used to do that.

16                  Q        Okay. Have you looked at that  
17                  issue at all?

18                  A        I have not, no.

19                  Q        Okay. Previously when you were  
20                  with Comcast programming, did you look for  
21                  synergies?

22                  A        With?

1 Q With the cable side.

2 A No.

3 Q Cable distributions.

4 A No.

5 Q When you testify about a  
6 three--way deal, making it work for everybody,  
7 isn't that really looking for a synergy?

8 A Actually, that would have been a  
9 dyssynergy for the cable side because they  
10 would have borne a cost if we had done  
11 something like that. That's why we were sure  
12 if it would happen. So I don't think that  
13 would have been a synergy.

14 Q Okay. It's really a synergy,  
15 though, if it positively impacts Comcast's  
16 bottom line, positively impacts Tennis  
17 Channel, and positively impacts USTA, correct?

18 A Well, we were -- yeah. We were  
19 looking for a way to positively influence all  
20 three groups.

21 Q Okay. So you were willing to use  
22 the interrelationship between the Comcast

1 cable side and the programming side to  
2 positively impact Comcast's bottom line?

3 A We -- there were discussions about  
4 that, but there were people and discussions  
5 that said we probably would not be able to  
6 affect that because of the difference between  
7 the cable side and the programming side.

8 Q Because of the way the reporting  
9 was done?

10 A Yeah because there would have been  
11 no benefit to the cable side for us to take  
12 that equity.

13 Q Had there been a small loss for  
14 them and a large problem for you, could you  
15 have gotten it done?

16 A I would -- I don't know if we  
17 could or couldn't have.

18 Q Okay. When you evaluate these  
19 deals, you evaluated the negatives and the  
20 positives for both sides of the business?

21 A We evaluate what deals? I'm  
22 sorry?

1           Q       When you were evaluating this  
2       versus open Tennis Channel-USTA deal --

3           A       That deal. We were talking mostly  
4       on the programming side. We knew it was a  
5       negative for the cable side, which was one of  
6       the reasons why in other discussions that  
7       weren't brought out here, we said we may not  
8       be able to do this. And there might be a  
9       different way we have to go about to get  
10      equity.

11          Q       Was there any thinking about the  
12      competition between Versus and Tennis Channel  
13      as you were doing that deal?

14          A       We did not consider Versus and the  
15      Tennis Channel to be competitors any more than  
16      any other networks that competitor with  
17      Versus.

18          Q       Okay.

19          A       There's 100 networks out there.

20          Q       I'd like to turn your attention to  
21      the 2007 analysis you did. It's Comcast 66.  
22      For the rest of us, it's the second thing

1 under tab C in the white binder.

2 A Okay.

3 Q Okay. I'd like to turn your  
4 attention to page 10. Now, this is your work.  
5 Is that correct?

6 A This is the work of my department.

7 Q Okay. The comps there, Lehman  
8 Brothers values Golf Channel at \$30 a sub and  
9 Versus at 25 a sub.

10 A Uh-huh.

11 Q And I think up above, it is saying  
12 you've valuing Tennis Channel at [REDACTED] per  
13 sub?

14 A That's correct.

15 Q Okay. Do you know if you used the  
16 same methods that Lehman Brothers used to make  
17 those, do those comps?

18 A I think we would have used more  
19 rigorous methods. I don't think Lehman would  
20 have had access to our business models.

21 Q Okay. Those are the business  
22 models based on Comcast assumptions and Tennis

1 Channel assumptions that you testified about?

2 A I'm just saying Lehman Brothers  
3 would not have had access to our business  
4 models for the Golf Channel or Versus. I  
5 think our business models and our valuations  
6 would have been more rigorous.

7 Q As I understood what you're using  
8 for Golf and Versus, you're presenting Lehman  
9 Brothers numbers. Is that correct?

10 A It may have been the only outside  
11 view that was available, but why they're on  
12 this page, I'm not certain. Maybe we used it  
13 as a ceiling. I'm not sure.

14 Q So you're saying you would have  
15 had better numbers for Golf and Versus than  
16 this?

17 A Yeah, I would say that.

18 Q So you're not sure why Lehman  
19 Brothers gets credit here for --

20 A No. I think we're just using it  
21 as a point of reference.

22 Q Okay. So they're a good point of

1 reference for what the value of Golf is?

2 A Yeah. It's hard to have good  
3 comps when you do valuations. So you use the  
4 best you can get, but that doesn't mean  
5 they're good.

6 Q Okay. And when you valued the  
7 Tennis Channel up above, you went to the Golf  
8 and the Versus people to figure out how to  
9 work the ad revenues. Is that correct?

10 A We went to our advertising, our  
11 experts in advertising, not to everybody at  
12 Golf and Versus but to our experts in  
13 advertising and one of whom was at the Golf  
14 Channel.

15 Q Okay. Did they have any other  
16 input in that valuation?

17 A They did not.

18 Q Okay. So you didn't look at them  
19 for the valuation of the rights or anything  
20 else?

21 A Not at all.

22 Q Okay. Did you look at the market

1       for those valuations?

2           A       Of the rights?

3           Q       For the rest of the shared value  
4       other than ads.

5           A       For the model, we ended up using  
6       most of the assumptions that the Tennis  
7       Channel gave us other than advertising. We  
8       may have talked to the Tennis Channel to work  
9       our way through those assumptions.

10          Q       Okay.

11          A       I don't recall specifically.

12          Q       Would you say that the best comps  
13       out there for Tennis are Golf and Versus?

14          A       No, I would not.

15          Q       Why did they show up here? Do you  
16       know?

17          A       Again, I don't know how or why  
18       they were selected here other than as a point  
19       of reference perhaps, as a ceiling or  
20       something to that effect. I'm not sure why  
21       they -- how or why they showed up here.

22                   MR. KNOWLES-KELLETT: Okay. I



1 have no further questions, Your Honor.

2 JUDGE SIPPEL: Does that open any  
3 other redirect?

4 MR. MOSS: Just very briefly, Your  
5 Honor, just a few questions, if I may. May I?

6 JUDGE SIPPEL: Please?  
7 Absolutely.

8 REDIRECT EXAMINATION

9 BY MR. MOSS:

10 Q Mr. Donnelly, to your knowledge,  
11 did Versus ever acquire any U.S. Open rights?

12 A It did not.

13 Q Mr. Donnelly, do you still have in  
14 front of you Tennis Channel exhibit 32?

15 A I can see if I can find it. Yes,  
16 I do.

17 Q Do you recall during  
18 cross-examination Mr. Schmidt asked you  
19 questions about this document and he asked you  
20 whether or not Marc Fein's e-mail on December  
21 14th, 2006 was the earliest discussion of this  
22 possible three-way deal involving Versus, the

1       USTA, and Tennis Channel? Do you recall those  
2       questions?

3               A       Yes, I do.

4               Q       And do you remember Mr. Schmidt  
5       asked you if you were aware of anyone raising  
6       this deal prior to Mr. Fein's December 14th  
7       e-mail?

8               A       Yes, I do.

9               Q       Do you whether, in fact, it was  
10      Mr. Schmidt's client Ken Solomon that first  
11      raised this idea that Mr. Fein is writing  
12      about here?

13              A       I don't remember who raised it at  
14      first. I know there were conversations back  
15      and forth with the Tennis Channel. I don't  
16      know who raised it first.

17                      MR. MOSS: Your Honor, if I may, I  
18      would like to approach with another document,  
19      please.

20                      JUDGE SIPPEL: Certainly.

21                      BY MR. MOSS:

22               Q       This is a document marked for

1 identification Comcast exhibit 666.

2 MR. MOSS: Sorry, Your Honor.

3 JUDGE SIPPEL: This is not an  
4 exhibit, then?

5 MR. MOSS: No.

6 JUDGE SIPPEL: Oh, yes, it is. It  
7 is not in evidence yet or is it?

8 MR. MOSS: It is. I believe it is  
9 in evidence, Your Honor.

10 JUDGE SIPPEL: Very well.

11 BY MR. MOSS:

12 Q Mr. Donnelly, take a moment to  
13 review this document. I'll point you to the  
14 e-mail from Mr. Solomon on December 10, 2006  
15 to Mr. Shell.

16 A Do you want me to read through the  
17 whole thing or --

18 Q No. Just --

19 A Just to --

20 Q Take as much time as you need,  
21 sir, but I'm going to point you to the  
22 December 10, 2006 e-mail.

1 MR. SCHMIDT: And I will just note  
2 for the record, Your Honor, that Mr. Donnelly  
3 is not on this document.

4 JUDGE SIPPEL: Thank you.  
5 Have you seen this document  
6 before?

7 THE WITNESS: I have not.

8 JUDGE SIPPEL: You have not?

9 THE WITNESS: I don't believe so.

10 JUDGE SIPPEL: Well, you don't  
11 recall seeing it other than reading through it  
12 right now?

13 MR. SCHMIDT: So on that basis,  
14 I'll raise the same objection Mr. Carroll  
15 raised. We're now running overtime. And  
16 something is being read into the record with  
17 this witness that he doesn't know about.

18 MR. MOSS: I was just going to use  
19 the document briefly, if I may, Your Honor?

20 JUDGE SIPPEL: Never mind. Just  
21 keep going on.

22 MR. MOSS: I'll see if it

1 refreshes his --

2 JUDGE SIPPEL: I'm going to keep  
3 that in abeyance for right now. We'll just  
4 keep going.

5 MR. SCHMIDT: Thank you.

6 BY MR. MOSS:

7 Q Now, Mr. Donnelly, this document  
8 is dated December 10, which is 4 days before  
9 Mr. Fein's e-mail. Is that correct?

10 A That is correct.

11 Q Yes. I just want to point you to  
12 the third paragraph down, the e-mail from Mr.  
13 Solomon to Mr. Shell. It says, "Heading to  
14 NYC tonight." Do you see that section?

15 A Yes, I do.

16 Q "We're moving forward on Rolland  
17 Garros rights. Del and I are meeting face to  
18 face with ESPN skipper again Tuesday."

19 A Right.

20 Q Do you see that?

21 A Yep.

22 Q And then it says, "We should do a

1 deal for the French and then try to get U.S.  
2 Open together and have Comcast take us up on  
3 an ownership position for carriage." Do you  
4 see that, sir?

5 A I do.

6 Q Does that refresh your  
7 recollection that it was Mr. Solomon who first  
8 proposed this three-way deal?

9 A It would appear that came before  
10 Marc's. I don't have a specific recollection,  
11 but it doesn't strike me as surprising.

12 JUDGE SIPPEL: I don't think that  
13 this is refreshing his recollection. I think  
14 he said he couldn't recall. And you're  
15 showing him this. And he is basically saying,  
16 "Yeah, that could have happened." I don't  
17 think it's a recollection thing, is it?

18 THE WITNESS: No. I am saying I  
19 said it -- I still don't recall, but it  
20 doesn't surprise me. It's not inconsistent  
21 with my understanding of those conversations  
22 back and forth. That's all I'm saying. It

1 doesn't refresh my recollection other than  
2 what I've said already about the conversation.

3 MR. MOSS: No further questions,  
4 Your Honor. Thank you.

5 MR. SCHMIDT: Two brief things,  
6 Your Honor.

7 RECROSS-EXAMINATION

8 BY MR. SCHMIDT:

9 Q Did you see the exhibit 666 before  
10 today?

11 A No, I have not.

12 Q Okay. You can't testify about the  
13 substance of it?

14 A I'm not sure what that means.

15 Q This is not something you have  
16 personal knowledge about, is it?

17 A No, it is not.

18 Q Go back to the table that was in  
19 your -- I believe it was your --

20 A Which?

21 Q -- 2007 MFN equity analysis,  
22 Comcast exhibit 66.

1 A Okay. Which page?

2 Q Page 10.

3 A Okay.

4 Q So, as I understand page 10, about  
5 halfway down, you calculate the discounted  
6 cash flow of Comcast post-deal case. Are you  
7 with me?

8 A Yes, I am.

9 Q So that's if Comcast would have  
10 taken an equity share in the Tennis Channel  
11 and granted greater carriage, correct?

12 A That's right.

13 Q And the per-subscriber range for  
14 Tennis Channel's value increases from ■ to ■  
15 dollars, correct?

16 A That's correct.

17 Q And that brings it into the range  
18 that at least this document lists as comp from  
19 Lehman Brothers, valuing the Golf Channel at  
20 \$30 a sub and Versus at \$25 a sub, correct?

21 A That's right.

22 MR. SCHMIDT: Thank you. Nothing



1 further, Your Honor.

2 JUDGE SIPPEL: That is it?

3 MR. MOSS: Your Honor, I am  
4 informed that we actually have not moved  
5 Comcast 666 into evidence. So I would like  
6 to.

7 JUDGE SIPPEL: I was just going to  
8 ask.

9 MR. SCHMIDT: No objection, Your  
10 Honor.

11 JUDGE SIPPEL: It is in.

12 (Whereupon, the aforementioned  
13 document was marked for  
14 identification as Comcast Exhibit  
15 Number 666 and was received in  
16 evidence.)

17 MR. MOSS: Thank you, Your Honor.

18 JUDGE SIPPEL: But I'm not going  
19 to give this witness' testimony much  
20 consideration with respect to this document in  
21 light of what has developed on the stand here.  
22 Okay. It's in evidence. Six sixty-six is

1 marked and received.

2 Is that it, then?

3 MR. MOSS: Yes, Your Honor. Thank  
4 you.

5 JUDGE SIPPEL: Mr. Donnelly,  
6 before you go back to New York to -- it's not  
7 New York, I guess? .

8 THE WITNESS: No. Philadelphia  
9 but moving to New York.

10 JUDGE SIPPEL: You don't sound too  
11 excited about that.

12 (Laughter.)

13 THE WITNESS: Go with the flow.

14 JUDGE SIPPEL: All right. You're  
15 excused as a witness, sir.

16 THE WITNESS: Thank you.

17 JUDGE SIPPEL: Thank you very  
18 much.

19 THE WITNESS: Thank you.

20 (Whereupon, the witness was  
21 excused.)

22 JUDGE SIPPEL: Where do we stand?